

ATTACHMENT 2DECLARATION

Morton L. Berfield, under penalty of perjury, declares that the following is true and correct to the best of his knowledge:

I am the President and a principal of Cohen and Berfield, P.C., which represents both Raystay Company and Glendale Broadcasting Company before the Federal Communications Commission.

I am the author of a November 7, 1991 letter from myself to David A. Gardner concerning fees and expenses incurred by Raystay Company in connection with the five LPTV construction permits it owned at that time. Two of the construction permits were for Lancaster, PA, and two other permits were for Lebanon, PA. The fifth permit originally specified Channel 56 with Red Lion, PA as the community of license. That permit was modified to specify York, PA as the community of license with call sign W23AY. As noted in the letter, the total legal fees paid by Raystay to Cohen and Berfield in connection with these authorizations was \$15,397.03.

Sections 73.3597(c)(2) and 74.780 of the Commission's rules limit payments that can be made to the seller of an unbuilt LPTV construction permit to the seller's legitimate and prudent expenses incurred "for preparing, filing, and advocating the grant of the construction permit for the station, and for other steps reasonably necessary toward

Federal Communications Commission

Docket No. 93-75 Exhibit No. 291

Presented by TRINITY

Disposition { Identified 15/3/94
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Rejected _____

Reporter M.K. FLEISHMAN

Date 5/3/94

placing the station in operation." I have reviewed the "Certification of Expenses" signed by David A. Gardner on January 6, 1992 in connection with the application to assign LPTV construction permit W23AY from Raystay Company to GroSat Broadcasting, Inc. That certification lists \$7,698.00 as the amount of Cohen and Berfield legal fees incurred in connection with the W23AY permit. The \$7,698.00 figure is almost exactly one-half of total fees of \$15,397.03 charged by Cohen and Berfield in connection with the five LPTV construction permits.

It was entirely proper and reasonable to list \$7,698 of the total legal fees charged as legal fees incurred and paid in connection with the W23AY permit that was sold. Indeed, seventy-five to eighty percent of the total legal fees charged could have been attributed to any one of the five permits. For the most part, the work relating to any one of the LPTV applications or construction permits also related to each of the other permits. The original application for the five LPTV construction permits were filed on March 9, 1989. The non-engineering portions of all five applications are identical except for information relating to channel number, community, and site availability certifications. The three non-engineering exhibits in each application are identical. The information needed to prepare the five applications was, for the most part, the same information.

On July 6, 1989 amendments of all five applications were filed reporting a decision involving George Gardner. All five amendments are identical except for the channel number, community name and file number of the application in question.

On March 14, 1990, Raystay submitted a series of declarations in support of its showing that it possessed the qualifications necessary to obtain a grant of the five LPTV construction permit applications. The same declarations were used with respect to all five applications. The five submissions made to the Commission were identical except for the file number and community name on each cover letter.

On May 7, 1990, a supplemental declaration of George Gardner was filed to supplement the March 14 showing. The same declaration was submitted with respect to all five applications. Again, the five submissions were identical except for the file number and community name on each cover letter.

To the best of my recollection, any other work that was performed with respect to the five LPTV construction permits prior to November 7, 1991 would have been general work relating to all of the permits instead of any one specific permit.

If Raystay had only filed one LPTV application instead of five, and if Cohen and Berfield had had to perform the same services for that one application, the charges for such

services would have been at least seventy-five to eighty percent of the \$15,397.03 in fees charged for the five applications. I am unaware of any Commission rule or policy that when services relate to more than one application, charges for services relating to these applications must be apportioned on a strict, pro rata basis. It was reasonable and proper for Raystay to allocate one-half of the total legal fees to W23AY.

The other four LPTV construction permits (two for Lancaster, PA, two for Lebanon, PA) were not sold but were turned in for cancellation by Raystay on March 23, 1993. If these permits had been sold, the aggregate total compensation Raystay could have received for legal fees could not have exceeded \$15,397.03. The \$10,000.00 that Raystay received for the sale of W23AY was less than the amount of legal fees that could have been allocated to that permit (\$11,547.77, or 75% of \$15,397.03). Raystay therefore did not make an illegal profit from the sale of W23AY.

With respect to the engineering fees of Robert Hoover, Mr. Hoover prepared the engineering portion of all five applications. According to the invoice attached to the motion to enlarge issues, Mr. Hoover's total charges for preparing these five applications was \$7,275. The "Certification of Expenses" signed by David Gardner allocated one-third of that

total, or \$2,425, to W23AY. In my opinion, such an allocation was reasonable and proper. While five applications were filed, only three transmitter sites were involved. The two Lancaster applications specified the same site, and the two Lebanon applications specified the same site. The application for what became W23AY specified a third site. Much of the work performed by Mr. Hoover was site specific. For instance, the topographic maps, area maps and vertical plan sketches for the two Lebanon applications are nearly identical. The same can be said for the two Lancaster applications. The application for what became W23AY required maps and sketches that were only used for that application. Furthermore, it appears from the environmental and RF radiation statements prepared by Mr. Hoover that much of the research he performed related to all five applications. For these reasons, it was reasonable and proper to allocate one-third of Mr. Hoover's charges to the W23AY permit. Again, if the other construction permits had been sold, the total compensation Raystay could have received for Mr. Hoover's engineering expenses would have been \$7,275.

The \$10,000 that Raystay received for the W23AY permit did not exceed its legitimate and prudent expenses that were paid and that could be legitimately allocated to that permit. The listing of expenses in the "Certification of Expenses"

contained in the W23AY assignment application was a reasonable and proper listing of such expenses.

9-14-93

Date

Morton L. Berfield

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